

Camden Iron & Metal, Inc.

1500 South Sixth Street
Camden, NJ 08101
Phone: (856) 365-7500
Fax: (856) 342-7488
Direct Phone: (856) 969-7028
Direct Fax: (856) 969-7077
Email: fcornell@camdeniron.com

July 27, 2000

Ms. Sherry Green
Environmental Protection Agency
Office of Site Remediation Enforcement
1200 Pennsylvania Avenue, NW
Mailcode 2272A
Washington, DC 20460

RE: Superfund Recycling Equity Act Comments

Dear Ms. Green:

Camden Iron & Metal, Inc. (CIM) appreciates this opportunity to provide comments on the Superfund Recycling Equity Act (SREA). Our comments focus on detailing what we consider the necessary actions to be for a Company to seek Superfund liability protection under SREA.

Background

The purpose of the SREA is to promote recycling by eliminating Superfund's disincentive for using recycled materials. Under current law, a party may initiate a cost recovery action against a provider of recycled raw materials (i.e., the Recycler), but may not initiate a cost recovery action against a party that provided virgin raw materials, even if the virgin material caused environmental contamination. Under the SREA, the provider of recycled materials (i.e., the Recycler) would not be subject to a cost recovery action if that provider met certain conditions.

The applicability of the SREA is wide-spread, ranging from small municipalities to major recycling facilities. A summary of the affected parties is listed below:

Type of Party	Number of Potentially Affected Individuals	CONSUMER When Party Functions as a Consumer Under SREA	RECYCLER When Party Functions as a recycler Under SREA
Consumers of recycled materials	Thousands of Manufacturing Facilities	When they use recycled material instead of virgin products in their process	When they recycle non-salable materials or produce scrap during renovation/facility upgrade activities
Scrap Processors	Tens of Thousands of Scrap Collection and Processing Facilities	When they purchase recyclable materials for processing (i.e., physical and/or chemical manipulation).	When they sell their product to Consumers.
Scrap Generators	Hundreds of Thousands to Millions of Companies,	Rarely, if ever.	When they sell their material to Scrap Processors

● Page 2			July 27, 2000
	Individuals and Government Entities		

Requirements Under the Law

SREA details specific requirements that must be met for a recycler to be exempt from Superfund liability for the materials they recycle in the future. These requirements are paraphrased below.

Recyclable Material Requirements For SREA Eligibility

1. The material shall be a "recyclable material" as defined in the Act
2. The material shall meet a commercial specification
3. A market shall exist for the material
4. A substantial portion of the material shall be made available for use as a feedstock for the manufacture of a new salable product
5. The material shall have characteristics such that it could have been used as a replacement or substitute for a virgin material.

Recycler Requirements for SREA Eligibility

6. Exercise reasonable care to determine that the consuming facility was in compliance with substantive (not procedural or administrative) provisions of Federal, State or local environmental law or regulations...applicable to the handling processing, reclamation, storage or other management activities associated with recyclable material. The SREA specifically states that reasonable care shall be determined using criteria that include
 - The price paid for material,
 - The ability of the Recycler to detect the nature of the consuming facility's operations concerning its handling, processing, reclamation, storage or other management activities associated with recyclable material,
 - The result of inquiries made to appropriate Federal State or local environmental agencies regarding the Consumer's past and current compliance with substantive provisions of any Federal, State or local environmental law or regulation...concerning its handling, processing, reclamation, storage or other management activities associated with recyclable material

For Scrap Metal or Batteries, the Recycler must also:

7. Exercise reasonable care to ensure that his own facility is in compliance with any applicable current or future Solid Waste Disposal Act regulations or standards (or federal regulations or standards applicable to battery recycling as defined in the Act) regarding the storage, transport, management, or other activities associated with the recycling of scrap metal
8. Not melt scrap metals or recover the valuable components of batteries.

Most of the requirements above are non-ambiguous. However, CIM believes that Agency input on requirement number six would be useful to streamline full scale utilization of the Act to encourage recycling.

CIM's View of Reasonable Care to Verify That a Consuming Facility is In Compliance

The SREA requires the Recycler to exercise reasonable care to verify that a consuming facility is in compliance with substantive (not procedural or administrative) provisions of Federal, State or local environmental law or regulations...applicable to the handling processing, reclamation, storage or other management activities associated with recyclable material. CIM believes that the EPA could facilitate implementation of the Act and encourage recycling by issuing the following guidance:

Scope of the Compliance Evaluation

CIM suggests that EPA state that the *recycler is responsible to determine the consuming facility's compliance with provisions that relate to the recyclable raw material*. Thus, the raw, recyclable material would become an "in-process material" when the consuming facility engages in a processing activity, as defined in RCRA's definition of processed scrap metal. CIM believes this approach is best, because it is based on an existing regulatory definition and it applies to all transactions in the recycling chain, from generator to scrap collector, from scrap collector to scrap processor, and from scrap processor to final consumer. Additionally, this approach would eliminate any confidentiality issues (i.e., customer list disclosure) that could have arisen if a Recyclers did not sell their product directly to a final consumer of the recyclable material.

CIM suggests that the term substantive provisions be defined as those provisions which, if not complied with, are likely to cause a release of pollutants to soil, ground water or surface water at the consuming facility. CIM's believes this approach is best because it is non-ambiguous and it clearly relates to the issue of Superfund liability.

CIM suggests that the frequency of investigations shall be based on the results of the Recycler's first consuming facility assessment and a risk evaluation of the operations at the consuming facility. However, a Recycler should be required to do a compliance evaluation for each consumer at least every three years. For instance, if a Recycler's initial investigation determines that a consuming facility has operated for 10 years without any non-compliance situations, then the recycler may schedule that facility's next compliance review three years later. However, if the consuming facility has a checkered history, an annual review would be required.

Procedural Elements of the Consuming Facility Compliance Evaluation

CIM recommends that the EPA direct Recyclers to adopt a tiered approach to evaluating the compliance of a Consumer facility. CIM also recommends that the overall approach be modeled after the industry standard for establishing eligibility for the Innocent Landowner Exemption to Superfund liability, to take advantage of the intense efforts that have been directed at achieving consensus standards for this Superfund liability exemption¹.

- Phase I – Records Review To Determine if Potential Compliance Issues Exist – The Recycler would be required to complete a Records Review that is generally consistent with that required under the ASTM standard for Phase I Environmental Site Assessments. Consistent with the ASTM standard, the appropriate information may be provided by any source, including the consumer, as long as the information is current. However, the recycler would not have to check records that are clearly unassociated with a consuming facility's management of recyclable raw materials (e.g., underground storage tank files). If the Phase I evaluation does not identify any non-compliance situations, then no further action would be required. However, if potential or actual violations were identified, a Phase II assessment would be completed.

¹ It should be emphasized that CIM recommends that the tiered approach be modeled, not the scope of the evaluation. It would be inappropriate to also model the scope, because of the vast difference between property purchase transactions and recyclable material sales transactions.

- Phase II – Confirmation of Existing Non-Compliance Situation – The purpose of a Phase II evaluation would be to determine if the potential or actual compliance situation identified by the Phase I has been deemed to be corrected by the agency that identified the non-compliance. The Phase II evaluation would likely include interviews with government agency officials and the consuming facility's environmental department, and the evaluation may be done by the Recycler or a third-party. If the Phase II evaluation determines that all non-compliance situations have received agency closure, then no further action would be required. However, if a confirmed non-compliance situation has not been closed by the responsible regulatory agency, a Phase III evaluation would be completed.
- Phase III – Evaluation of Open Compliance Issues. The purpose of the Phase III evaluation would be for the Recycler to make a determination as to whether or not the Consumer's actions put the facility in compliance with applicable regulations. Given that different actions are required to evaluate different compliance situations, the specific tasks involved in a Phase III evaluation should not be specified. Instead, the EPA should specify that the Recycler is responsible for achieving the goal by ensuring that a compliance assessment is completed.

CIM's believes that the approach detailed above is reasonable, flexible and sufficiently prescriptive to streamline the implementation of the SREA throughout the recycling industries and minimize the redirection of Superfund cleanup funds to SREA litigation activities.

Again, I would like to thank you for the opportunity to comment of the SREA. If you have any questions or comments, please feel free to call me.

Sincerely,

CAMDEN IRON & METAL, INC.

Frederick W. Cornell